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nished the subject of at least three articles in the Va. Law Register. See 2 Va. Law Reg. 504, 15 id. pp. 1, 337. Of these three writers, the only one who seems to have successfully forecasted the decision of the Supreme Court of Appeals upon this question, is the author of the article in 15 Va. Law Reg. 337, and we congratulate him upon having so successfully hit upon the solution that the highest Appellate Court has now declared to be the correct one. Mr. Manson, writing in 2 Va. Law Reg., p. 1, turns out to have been partially right, but not to the extent that he claims that a notice after the work, etc., is finished is sufficient. It seems to us the decision and rule here laid down are right and just, and based upon a correct interpretation of the language of the statute, and it is a matter for congratulation that so important a question upon the interpretation of a statute of such general application has now been finally decided.  
J. F. M.

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SMITH, TREASURER, *v.* BELL *et als.*

June 13, 1912.

**1. Elections (§ 83\*)—Qualifications of Voters—Payment of Taxes.**

—Under Const. art. 2, § 21 (Code 1904, p. ccxiii), requiring as a prerequisite to the right to vote, that the voter shall pay all state poll taxes assessed or assessable against him, a person assessable with poll taxes, who pays such taxes without their actual assessment against him, as required by law, is entitled to vote.

[Ed. Note.—For other cases, see Elections, Cent. Dig. §§ 77-81; Dec. Dig. § 83.\*]

**2. Elections (§ 83\*)—Qualifications of Voters—Payment of Taxes.**

—Under Const. art. 2, § 21 (Code 1904, p. ccxiii), requiring the payment of state poll taxes as a prerequisite to the right to vote, and section 38 (page ccxvi), requiring county and city treasurers to file lists of persons who pay such taxes before each regular election, a treasurer properly included on such list the names of persons paying their taxes to him personally after they had been returned delinquent and he had paid his collections to the auditor, notwithstanding Code 1904, § 605, requiring payment of taxes appearing on the delinquent list to the collector or auditor, and providing that they cannot be collected by the treasurer, since the payment, having reached the proper officer, was as valid as if made to him in the first instance, and the constitutional right of suffrage cannot be subordinated to statutory enactments relative to the collection of taxes.

[Ed. Note.—For other cases, see Elections, Cent. Dig. §§ 77-81; Dec. Dig. § 83.\*]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Error to Circuit Court of Princess Anne county.

Petition for a mandamus by R. J. Bell and others against A. C. Smith, County Treasurer. To review an order granting the mandamus, defendant brings error. Reversed.

*R. R. Hicks, Loyall, Taylor & White*, for the plaintiff in error.  
*Jeffries, Wolcott, Wolcott & Lankford*, for the defendants in error.

WHITTLE, J.: Article II of the Virginia Constitution deals with the elective franchise. Section 38 of that article provides, that after January 1, 1904, the treasurer of each county and city shall, at least five months before each regular election, file with the clerk of the circuit court of his county, or the corporation court of his city, a list of all persons in his county or city who have paid, not later than six months prior to such election, the State poll taxes required by the Constitution.

In compliance with that requirement, the plaintiff in error, A. C. Smith, as treasurer of Princess Anne county, on May 6, 1911, filed with the clerk of the circuit court of the county a list of all persons who had paid to him their capitation taxes for the years 1908, 1909 and 1910, and who were consequently, *prima facie* at least, entitled to vote at the general election to be held on November 7, 1911.

On September 2, 1911, the defendants in error filed a petition in the Circuit Court of Princess Anne county, praying for a *mandamus* to require the plaintiff in error to return and file with the clerk a new list of voters who had personally paid their poll taxes to him for the years 1908, 1909 and 1910, and that he specially omit from said list the names of certain persons who had never been assessed with poll taxes as required by law, and certain other persons included therein who, though they had been assessed with poll taxes, were returned delinquent for the years 1908 and 1909.

The case was heard upon the pleadings and evidence, and to an order of the circuit court granting the prayer of the petition this writ of error was allowed.

It is not denied that, with respect to both classes of persons who were deprived of their right to vote at the November, 1911, election by the order complained of, many of them were either assessed or assessable with poll taxes under the Constitution, and had paid their taxes to the treasurer, who accounted for the same to the auditor of public accounts. The question, therefore, for our determination is, whether these citizens are to be disfranchised solely because, in case of one class, they paid

their poll taxes to the treasurer without having been previously assessed by the commissioner of the revenue and without his certificate of assessment (Acts 1910, p. 584); and in case of the other class, because they paid their taxes to the treasurer after they had been delinquent. Va. Code, 1904, secs. 605, 606, 607 and 608.

Section 21 of Article II of the Constitution provides, that "Any person registered under either of the last two sections shall have the right to vote for members of the General Assembly and all officers elective by the people, subject to the following conditions: That he, unless exempted by section 22, shall, as a prerequisite to the right to vote after the first day of January, 1904, personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him, under this Constitution, during the three years next preceding that in which he offers to vote; . . ." *Tazewell v. Herman*, 108 Va. 416, 2 Va. App. 337; *Tilton v. Herman*, 109 Va. 503, 3 Va. App. 237.

It is plain that section 21 contemplates the payment of poll taxes, not only by persons who have been *assessed* with such taxes, but also by persons who are *assessable* therewith. Nevertheless, the decision of the circuit court denies such right to the latter class, and to that extent nullifies the provision and disfranchises citizens who have fully complied with its terms. The order, moreover, strikes from the voting list the names of other citizens, who were assessed by the commissioner of the revenue and were registered voters of the county and had paid their poll taxes to the treasurer, *who paid his collections to the auditor*, merely because such payment was made after the taxes had been returned delinquent.

Section 608 of the Code provides, that taxes appearing on the delinquent list (returned under section 605) may be paid either to the clerk or the auditor; but that such taxes cannot be collected by the treasurer.

It may well be that these citizens, by selecting the treasurer as the medium for transmitting their taxes to the auditor, assumed the risk of his discharging that duty; yet, after the money reached the hand of the proper officer, the payment was as valid as if it had been made to him in the first instance. The State undoubtedly possesses plenary power to devise adequate means for assessing, levying and collecting its revenues, subject only to such limitations as may be imposed by the Constitution; but the confusion in this case arises from the attempt to subordinate the right of suffrage granted to the citizen, in certain conditions, by the Constitution to statutory enactments of the character indi-

cated. Such legislation is essential, but it may not be so interpreted and enforced as to abridge the elective franchise as guaranteed by the Constitution.

For these reasons, the order of the circuit court must be reversed with costs, and the case remanded for further proceedings.

Reversed.